Filed 12/14/09 McNamara v. Bailey CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

NED MCNAMARA, Plaintiff and Respondent, v. PAUL BAILEY et al., Defendants and Appellants.	B204153 (Los Angeles County Super. Ct. No. SC089071)

APPEAL from a judgment of the Superior Court of Los Angeles County. Lisa Hart Cole, Judge. Affirmed.

Law Offices of Tshombe Sampson and Tshombe Sampson, for Defendants and Appellants.

Lance Haddix & Associates and Lance Haddix, for Plaintiff and Respondent.

Defendants and appellants Michele Blackmon and Paul Bailey (appellants) appeal from a money judgment entered in favor of plaintiff and respondent Ned McNamara following a nonjury trial. Appellants contend various findings are not supported by substantial evidence. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

We recite the evidence in accordance with the usual standard of review of the sufficiency of the evidence.[1] Bailey, a home designer and builder, purchased a two-story, townhouse style condominium on Harbor Street in Venice, California in August 2005 for $1.3 million (the property). Blackmon, a real estate agent with whom Bailey had been in an "off and on" relationship since 1996, represented Bailey in the transaction, for which she received the usual agent's commission. At the time, Bailey and Blackmon were living in Bailey's house, but were estranged and maintaining separate living areas in the house. Feeling the need for more separation, Bailey purchased the property with the intention of having Blackmon live there. Accordingly, Bailey made an oral agreement with Blackmon that, in exchange for Blackmon paying all of the expenses associated with the property (mortgage, homeowner's dues, utilities, etc.) she could occupy the property indefinitely. Bailey did not authorize Blackmon to make any improvements to the property.

Without Bailey's knowledge, Blackmon hired McNamara, a licensed contractor, to remodel the interior of the condominium for $35,000, payable in four installments; these

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[1] We review the entire record to determine whether there is substantial evidence supporting the factual determinations of the trier of fact. (*Fariba v. Dealer Services Corp.* (2009) 178 Cal.App.4th 156, 170-171 (*Fariba*).) We review the entire record, viewing "the evidence and resolving all evidentiary conflicts in favor of the prevailing party and indulging all reasonable inferences to uphold the judgment [citation]. The issue is not whether there is evidence in the record to support a different finding, but whether there is some evidence that, if believed, would support the findings of the trier of fact. [Citation.] Credibility is an issue of fact for the trier of fact to resolve [citation], and the testimony of a single witness, even a party, is sufficient to provide substantial evidence to support a factual finding [citation]." (*Ibid.*) " 'The substantial evidence standard of review is applicable to appeals from both jury and nonjury trials. [Citation.]' [Citation.]" (*Piedra v. Dugan* (2004) 123 Cal.App.4th 1483, 1489 (*Piedra*).)

terms were memorialized in two documents that Blackmon signed: the "Interior Estimate" and the "Prime Construction Contract" (collectively, "the home improvement contract").[2]

At the time the home improvement contract was executed, McNamara estimated that the project would be completed in 30 days. But during the course of the work, Blackmon requested additions and changes. Including the change orders, the project took 90 days to complete. After McNamara completed the items on Blackmon's punch list in mid-December 2005, he presented Blackmon with his final bill, the "Final Balance of Contract" document (Trial Exh. 6); it reflected a $6,500 balance due on the original $35,000 home improvement contract plus an additional $9,500 due for the change orders. Blackmon approved the final bill but later refused to pay McNamara.

McNamara filed a mechanic's lien on the property in December 2005; in the course of doing so, he discovered that Bailey, not Blackmon, was the property owner of record. In March 2006, McNamara filed an action against Blackmon and Bailey for breach of written contract and foreclosure of the mechanic's lien, account stated, common count and fraud.[3] Blackmon and Bailey cross-complained against McNamara for negligence under various theories, breach of contract and intentional misrepresentation.

Following a two-day court trial in May 2007, the trial court announced judgment in favor of McNamara on his breach of contract and account stated causes of action and the cross-complaint, but in favor of appellants on the mechanic's lien cause of action in the complaint. According to the written statement of decision filed on August 29, 2007,

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[2] The parties dispute whether Blackmon represented herself to McNamara as the property owner. McNamara maintains that she did; Blackmon claims she never affirmatively represented herself to McNamara as the owner (she signed the form Prime Construction Contract in the space identified for the owner's signature), but she admits she did not tell McNamara that she was a tenant and not the owner of the property.

[3] On October 5, 2009, appellants filed a motion to augment the record with McNamara's complaint and appellants' answer. We hereby grant that motion. This was appellants' second motion to augment. We previously granted appellants' motion to augment the record with various other documents, including appellants' cross-complaint.

the trial court found that Blackmon entered into a written contract with McNamara without Bailey's knowledge and in direct contravention of the oral agreement pursuant to which Bailey rented the property to Blackmon; McNamara performed the agreed upon work in a workmanlike manner (with the exception of a damaged water pipe which caused some water damage); in December 2005, Blackmon orally agreed to pay McNamara's final bill, but she did not do so; the balance Blackmon owed on the contract was $14,900, comprised of the $16,000 sum reflected on the Final Balance of Contract, less $1,100 for some work not performed and repairs necessitated by the water leak. Finding the mechanic's lien was defective because McNamara did not provide the statutorily required 20-day notice, the trial court expunged the lien. In its oral statement of decision, the trial court ordered McNamara to withdraw the lien within 24 hours. The written statement of decision expunged the mechanic's lien if it had not been removed in accordance with the trial court's oral order. The trial court denied appellants' motion for new trial.

On November 16, 2007, Blackmon and Bailey filed a notice of appeal from the judgment and the October 18, 2007 order denying the motion for new trial.

DISCUSSION

A. *The Home Improvement Contract Satisfied Business and Professions Code Section 7159*

As we understand appellants' contention, it is that there was insufficient evidence to support the conclusion, implicit in the trial court's finding that the parties entered into a written contract, that the home improvement contract complied with Business and Professions Code section 7159 (section 7159). We conclude that the home improvement contract satisfies section 7159, as it was in effect at the time the parties executed the documents. We further conclude that, although the change orders do not satisfy former section 7159, they are enforceable against Blackmon to avoid unjust enrichment.

Section 7159 governs contracts for home improvement work between a licensed contractor and a homeowner or tenant. In September 2005, when Blackmon hired

McNamara to do the home improvement work to the property, the statute provided: "(a) A home improvement contract and any changes to the contract shall be in writing and signed by the parties. [¶] . . . [¶] (e) A change-order form for changes or extra work shall be incorporated into the contract and shall become part of the contract if it is in writing and signed by the parties. [¶] . . . [¶] (g) The provisions of this section are not exclusive and do not relieve the contractor from compliance with any other applicable provision of law." (Former § 7159.)[4]

In *Asdourian v. Araj* (1985) 38 Cal.3d 276 (*Asdourian*), our Supreme Court observed that the policy of section 7159 "is to encourage written contracts for home improvements in order to protect unsophisticated consumers." (*Asdourian*, at p. 292, superseded on other grounds by Bus. & Prof. Code, § 7031.) Although a contract made in violation of a regulatory statute is generally void, a contract that does not comply with section 7159 may still be enforceable to avoid unjust enrichment to a homeowner who receives the benefit of a home improvement. (*Asdourian*, at pp. 291- 292.) For example, in *Asdourian*, a remodeling contract that did not comply with section 7159 was held enforceable because: (1) the defendant was a real estate investor, not an unsophisticated homeowner or tenant; (2) the plaintiff and defendant were friends and had past business dealings together; and (3) the plaintiff fully performed according to the oral agreement and the defendant accepted the benefits of performance; accordingly, the defendant would be unjustly enriched if allowed to retain the benefits bestowed by the plaintiff without compensating him. (*Asdourian*, at p. 293.)

Relying on *Asdourian*, the court in *Davenport & Co. v. Spieker* (1988) 197 Cal.App.3d 566, 570 (*Davenport*), held that a contractor's noncompliance with

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4 Section 7159 has been extensively rewritten since the events at issue here. The current version of the statute sets forth substantially more detailed requirements for the form and content of home improvement contracts than did the version of the statute in effect when McNamara and Blackmon entered into their agreement. A new or amended statute applies prospectively only, unless the Legislature clearly expresses an intent that it operate retroactively. (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 287.) There is no retroactivity provision in current section 7159. Accordingly, this case is governed by former section 7159.

section 7159 did not preclude the contractor from recovering for work performed pursuant to unwritten change orders. The court reasoned that the defendant (a partner in a real estate investment and development company) was not an unsophisticated consumer, nothing about the contract made it inherently illegal or immoral, and the defendant should not be permitted to retain the benefits of the oral change orders without compensating the contractor. (See also *Arya Group, Inc. v. Cher* (2000) 77 Cal.App.4th 610, 614-618 (*Arya*) [failure to comply with Bus. & Prof. Code, § 7164 [construction of single family residence] does not preclude contractor from seeking "to enforce its contract claim . . . to the extent [the property owner] would otherwise be unjustly enriched as a result of her failure to compensate [the contractor] for the reasonable value of its work . . . ."].)

Here, the home improvement contract satisfies former section 7159. When the parties executed those documents in September 2005, former section 7159 required a "legible" "writing . . . signed by the parties." The documents are legible. As we discuss in the next part, there is substantial, albeit disputed, evidence that Blackmon signed both and that McNamara gave Blackmon the original of the Prime Construction Contract (former § 7159, subds. (a), (d)). Former section 7159 did not require the contract to state a start or stop date or to contain other specific language required by the current statute.

More difficult is the question of whether McNamara can enforce the change orders. This is because the document entitled Final Balance of Contract, which sets forth the change orders, is not signed by Blackmon and former section 7159, subdivision (e) requires signed change orders. But under the reasoning of the courts in *Asdourian*, *Davenport* and *Arya*, the change orders are nevertheless enforceable under the circumstances.

Blackmon was not a real estate investor as were the defendants in *Asdourian*, but she was not an unsophisticated consumer, either. She was an experienced real estate agent; her longtime boyfriend from whom she was renting the property was a self-described home designer and builder and she had represented him in several real estate transactions, including the purchase of the property at issue. During construction,

Blackmon was running her real estate business from the property so she was on site most of the time to observe the progress. McNamara testified that Blackmon orally agreed to each of the change orders and Blackmon does not dispute that she requested the work identified in the Final Balance of Contract. McNamara testified that he completed the work, including Blackmon's punch list, and that Blackmon reviewed and approved the final bill.[5] Finally, as in *Asdourian* and *Davenport*, there was nothing inherently unjust or illegal about the oral change orders. From this evidence, the trier of fact could reasonably conclude that Blackmon accepted the benefits of McNamara's performance under the oral contract for change orders and Blackmon would be unjustly enriched if allowed to retain the benefits bestowed by McNamara without compensating him. (*Asdourian*, *supra*, 38 Cal.3d at p. 293.) Under these circumstances, the trial court's conclusion that the change orders are enforceable contracts, notwithstanding their noncompliance with former section 7159, is supported by substantial evidence.

B. *Substantial Evidence Supports the Finding That Blackmon Signed the Home Improvement Contract*

Appellants contend the evidence was insufficient to support the trial court's finding that Blackmon signed the home improvement contract. Although appellants concede that Blackmon signed the Interior Estimate, which indicates her acceptance of McNamara's written proposal to do the specified work for $35,000, they argue that her signature on the "Prime Construction Contract" was forged. We are not persuaded.

As we have explained, a party's testimony may be sufficient to constitute substantial evidence to support a factual finding, credibility determinations are for the trier of fact, and it is of no consequence that the trier of fact might have reached a contrary conclusion if it believed other evidence. (*Fariba*, *supra*, 178 Cal.App.4th at p. 171; *Piedra*, *supra*, 123 Cal.App.4th at p. 1489.)

Here, there was evidence that Blackmon approached McNamara about doing the home improvement project after she saw work he had done for other clients.

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5 Blackmon testified that she never saw the Final Balance of Contract.

McNamara presented Blackmon with the Interior Estimate which sets forth McNamara's proposal to do the specified work for $35,000, payable in four installments.[6] It is undisputed that Blackmon signed the Interior Estimate on September 9, 2005, on a line immediately to the right of the words "Acceptance of Proposal." McNamara testified that he filled out the Prime Construction Contract, which he described as a government approved form which creates an original and a signed carbon, before giving it to Blackmon to sign. After Blackmon signed it, McNamara gave her the original and retained the carbon copy for himself. The photocopy of the signed document introduced into evidence identifies Blackmon as the owner of the property, reiterates the $35,000 contract amount and the four-installment payment plan and includes arbitration and attorney fees provisions. This evidence is sufficient to support the finding that Blackmon signed the Prime Construction Contract. Accordingly, there is substantial evidence that Blackmon signed an enforceable home improvement contract.

That there was conflicting evidence – Blackmon testified that she did not sign the Prime Construction Contract and saw it for the first time during the litigation – does not allow us to disregard a contrary finding supported by substantial evidence. (*Fariba*, *supra*, 178 Cal.App.4th at p. 170.)

C. *Negligence Per Se and Unclean Hands Doctrines*

Appellants make two arguments that purport to invoke the unclean hands and negligence per se doctrines. First, they contend the trial court's finding that Blackmon owes McNamara additional monies is not supported by the evidence because McNamara's failure to comply with Civil Code sections 3097 (section 3097) and 3114 (section 3114), governing mechanic's liens, constitutes "negligence per se" and "unclean

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6 The Interior Estimate describes the installments as: "1/3 down, 1/3, 1/4, final 1/4." Inasmuch as this adds up to more than 100 percent, it is reasonable to infer that the parties intended the third payment to be one-half of the remaining third (i.e., one-sixth) and the final payment to be the remaining one-sixth.

hands."[7] As we understand their second argument, it is that the trial court's finding in favor of McNamara on the negligence per se cause of action in the cross-complaint is not supported by substantial evidence because failure to comply with Business and Professions Code section 7159 constitutes negligence per se. But appellants offer no coherent legal argument or citations to authority in support of either argument. As such, we treat them as waived and decline to consider them. (Cf. *Colores v. Board of Trustees* (2003) 105 Cal.App.4th 1293, 1301, fn. 2 (*Colores*) [treating absence of "true legal analysis" as waiver]; *McComber v. Wells* (1999) 72 Cal.App.4th 512, 522 (*McComber*) [in absence of legal argument on a particular point, the court may treat it as waived].)

D. *Substantial Evidence Supports the Amount of Damages Awarded*

Also without merit is appellants' contention that the evidence does not support the damage award because the evidence of damages was not credible. As already noted, credibility determinations are for the trier of fact and a party's testimony may be sufficient to constitute substantial evidence to support a factual finding. (*Fariba*, *supra*, 178 Cal.App.4th at p. 171; *Piedra*, *supra*, 123 Cal.App.4th at p. 1489.)

Here, the trial court found Blackmon owed McNamara "the balance of the contract, to wit $16,000, less $1,100 which [McNamara] admits is an offset for work not performed and minor repairs necessitated by the water intrusion caused by [McNamara], for a total amount due of $14,900." This finding is supported by the evidence, already recounted, that the home improvement contract and change orders were enforceable; McNamara's testimony that he completed all of the work called for both in the original $35,000 written home improvement contract and the change orders, including all of the items on Blackmon's punch-list, in mid-December; after McNamara completed the

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[7] Section 3097 requires that, 20 days prior to filing a mechanic's lien, a claimant who is not under direct contract with the owner of property must give the owner written notice that failure to pay bills for specified labor or materials may lead to the filing of a mechanic's lien. Section 3114 precludes enforcement of a mechanic's lien unless the claimant has given the preliminary notice required by section 3097.

punch-list, Blackmon approved the Final Balance of Contract and promised to pay him the amounts reflected on that document.

During the course of the litigation, general contractor George Boulanger toured the property at McNamara's request. Blackmon and Bailey were present and Blackmon pointed out to Boulanger various items with which she was dissatisfied. Blackmon told Boulanger that there was water damage on the living room ceiling, but Boulanger did not see any damage. He noticed hairline cracks in the cement plaster on the one wall of the master bathroom that was finished in that manner but in Boulanger's experience, this was typical of that type of installation. Boulanger also noticed hairline cracks in the floor, but did not believe these needed to be repaired. Boulanger estimated it would take between four and six man hours to rectify the problem at a cost of between $600 and $800. Additionally, Boulanger estimated $150 to $200 to repair an area under a sink that was left unfinished. Boulanger opined that nothing justified the much greater estimate for repairs obtained by Blackmon and Bailey.

This constitutes substantial evidence in support of the trial court's finding that Blackmon owed McNamara $16,000, less the amount necessary to repair or complete a few unfinished items. That appellants submitted evidence from which the trier of fact could draw a different conclusion does not compel a contrary result. (*Fariba*, *supra*, 178 Cal.App.4th at p. 170; *Piedra*, *supra*, 123 Cal.App.4th at p. 1489.)

E. *The Denial of Attorney Fees to Appellants as Prevailing Parties on the Mechanic's Lien Cause of Action Was Not an Abuse of Discretion*

Appellants argue that the finding on their cross-complaint that they were not damaged was not supported by substantial evidence.[8] The damages they claim to have suffered were the attorney fees they incurred successfully defending against the mechanic's lien cause of action. We disagree.

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[8] In this part of their opening brief, appellants also contend the trial court improperly analyzed damages under the substantial performance doctrine, which they contend is not applicable to an installment contract. Because they cite no legal authority to support the contention, we treat it as waived and do not consider it. (*Colores*, *supra*, 105 Cal.App.4th at p. 1301, fn. 2; *McComber*, *supra*, 72 Cal.App.4th at p. 522.)

The only authority appellants cite in support of their contention is *Contra Costa County Title Co. v. Waloff* (1960) 184 Cal.App.2d 59. In that case, the court held that attorney fees are a proper element of damages in cases involving slander of title. (*Id.* at p. 67.) *Contra Costa* did not involve a mechanic's lien. In fact, it is well settled that "[a]ttorney's fees are not available to a prevailing litigant absent a contractual agreement or statutory authorization, and no statute provides for attorney's fees in mechanic's lien foreclosures. [Citation.] 'Although the statutory scheme [for mechanic's liens] originally provided for the recovery of attorney's fees by the successful lienholder, this provision of the statute was declared unconstitutional [citation] and no similar provision has been subsequently enacted . . . . It is thus black letter law that except for any cause of action on a *contract* between the lien claimant and the owner of the improved property which provides for fees, a lienholder has no entitlement to them from the owner. . . . [¶] . . . [I]f indeed a contract exists, then that is the separate source of attorney's fees; it is not the *lien* which creates the right.' [Citation.]" (*Abbett Electric Corp. v. California Fed. Savings & Loan Assn.* (1991) 230 Cal.App.3d 355, 364; see Code Civ. Proc., § 1033.5, subd. (a)(10).)

In an action on a contract that includes an attorney fee provision, the prevailing party is "the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section." (Civ. Code, § 1717, subd. (b).) " 'If neither party achieves a complete victory on all the contract claims, it is within the discretion of the trial court to determine which party prevailed on the contract or whether, on balance, neither party prevailed sufficiently to justify an award of attorney fees.' [Citation.] 'Because the statute allows such discretion, it must be presumed the trial court has also been empowered to identify the party obtaining "*a greater relief*" by examining the results of the action in relative terms: the general term "greater" includes "[l]arger in size than others of the same kind" as well as "principal" and "[s]uperior in quality." [Citation.]' [Citation.]" (*Silver Creek, LLC v. BlackRock Realty Advisors, Inc.* (2009) 173 Cal.App.4th 1533, 1538.)

Here, the Prime Construction Contract included the following attorney fees provision: "In the event that there are court proceedings arising out of or related to the performance or interpretation of this contract, the court shall award reasonable attorneys fees to the prevailing party." The trial court found that Blackmon entered into the home improvement contract with McNamara without Bailey's knowledge and in contravention of the agreement pursuant to which Bailey rented the property to Blackmon. Attorney fees were not available to Bailey since he was not a party to the Prime Construction Contract, nor did he have a statutory right to attorney fees.

Although Blackmon may have been entitled to contractual attorney fees had she been found the prevailing party, the trial court concluded that McNamara was the prevailing party and awarded attorney fees to him. Since McNamara obtained a net monetary recovery against Blackmon, appellants have not shown that this was an abuse of discretion.

F. *There Was Substantial Evidence That McNamara Completed the Work in a Timely Fashion*

Appellants contend there is insufficient evidence to support the trial court's judgment in favor of McNamara on the cross-complaint's breach of contract cause of action. They argue that McNamara's failure to complete the project within the agreed upon 30 days was a breach of the contract. We find no error.

Explaining its judgment in favor of McNamara on the cross-complaint, the trial court observed that McNamara "did more work than Miss Blackmon originally requested, and that was the reason why it took longer than it should have. She asked for very extensive work to be done, and he did the work." Appellants' conflicting evidence does not compel a contrary result. (*Fariba, supra,* 178 Cal.App.4th at p. 170; *Piedra, supra,* 123 Cal.App.4th at p. 1489.)

G. *There Was Substantial Evidence That McNamara Was Not Given an Opportunity to Correct Any Problems*

Appellants contend there is insufficient evidence to support the trial court's finding that, as to the cross-complaint, "even if . . . things weren't entirely perfect, [Blackmon] didn't . . . give [McNamara] an opportunity to correct." They argue Blackmon testified that, at the time McNamara recorded the lien, he and Blackmon "were in agreement that he would either complete the job, or hire someone else to do it for him. . . . [¶] The reasonable conclusion is that the job was not completed and [Blackmon] was in fact giving [McNamara] more time by demanding that he complete the job, or find someone else to complete it."[9]

McNamara testified that after he completed the job in mid-December, Blackmon gave him a punch list. He spent a few hours at the property correcting all of the items on the punch list. When he was done, Blackmon said, "Fine. Call me tomorrow. I will pay you tomorrow." Blackmon never requested that he correct anything else. She did not request that he correct any electrical work. The first time McNamara heard about any water damage was in the litigation. This evidence is sufficient to support the challenged finding and the conflicting evidence does not compel a contrary result. (*Fariba*, *supra*, 178 Cal.App.4th at p. 170; *Piedra*, *supra*, 123 Cal.App.4th at p. 1489.)

H. *There Was Substantial Evidence That McNamara Completed the Home Improvement Project in a Workmanlike Manner*

Appellants contend the trial court should have entered judgment in favor of them on their negligence cause of action because there was insufficient evidence that McNamara was not negligent in the manner in which he performed the home

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9 Appellants also complain that there was insufficient evidence to support the trial court's finding that Blackmon "didn't even pay him." But appellants' reading of the trial court's statement is unreasonably narrow. The damage award is comprised of only the unpaid balance on the original $35,000 home improvement contract and the unpaid change orders; thus, the trial court clearly recognized that Blackmon paid McNamara $28,500 of $35,000; the trial court's statement "she didn't even pay him" is obviously a reference to the change orders, which Blackmon does not claim to have paid.

improvement contract. They argue that "[c]ommon sense and reason should have led to a presumption of damages, even if the photographs of the damages were not sufficiently compelling" and that McNamara and his witnesses were not credible. We find no error.

The cross-complaint alleges McNamara was negligent as a result of his workers failing to turn off the water while they were working on the plumbing, cutting electrical wires while drilling a hole in the downstairs bathroom wall and using the wrong materials to install the cement walls and flooring in the upstairs bathroom. In its written statement of decision, the trial court found McNamara performed the work "in a workmanlike manner, but for the accidental damage to a water pipe in the wall causing water intrusion, which [McNamara] repaired at his own cost."

The trial court's finding was supported by Boulanger's testimony that he did not notice any water damage in the ceiling; the hairline cracks in the cement plaster on the master bathroom wall were typical of that type of installation and would cost between $600 and $800 to correct; Boulanger did not believe that the hairline cracks in the floor needed to be repaired. In Boulanger's opinion, nothing justified the estimate for repairs obtained by Blackmon and Bailey.

That appellants presented conflicting evidence which supported their claims does not compel a contrary result because, as we have explained, it was for the trier of fact to resolve the conflict. (*Fariba, supra,* 178 Cal.App.4th at p. 170; *Piedra, supra,* 123 Cal.App.4th at p. 1489.)

I. *Substantial Evidence Supports the Trial Court's Finding That McNamara Did Not Commit Fraud*

Appellants contend there is insufficient evidence to support the trial court's finding in favor of McNamara and against appellants on the cross-complaint's intentional misrepresentation cause of action. As to Blackmon, they argue that McNamara falsely represented to Blackmon that "he had a licensed, work crew that worked with him on his jobs. . . . He did not tell her that he subcontracted out all of the work or that some of his workers would come from the Home Depot parking lot." As to Bailey, they argue that the lien was for an amount in excess of the balance owed on the $35,000 home

improvement contract, McNamara and his attorney's paralegal forged Blackmon's signature on the Prime Construction Contract and the Final Balance of Contract was fabricated. We find no error.

Here, the trial court did not specifically address the fraud cause of action in its oral or written statement of decision. As to Blackmon, the only reasonable inference from its judgment in favor of McNamara is that it simply did not believe that McNamara made any misrepresentations to Blackmon about his employees or subcontractors, that Blackmon justifiably relied on any misrepresentations, or that she was damaged as a result. As to Bailey, there was no evidence that McNamara made any misrepresentations to him; after all, Bailey's position at trial (which the trial court credited), was that he knew nothing about the home improvement contract until the litigation was commenced with the filing of a mechanic's lien. Thus, he could not have relied on any misrepresentation to his detriment.

J. *Appellants Have Not Established That McNamara "Defrauded" the Court*

As we understand appellants' argument, it is that the trial court erred in denying their motion for new trial, the gravamen of which was that McNamara's attorney of record, Lance Haddix, was acting as a front for paralegal Steven Edmonson, a disbarred attorney, who was McNamara's attorney-in-fact. We find no error. Appellants contend that the alleged misconduct by Haddix & Edmonson was an "irregularity in the proceedings of the court" under Code of Civil Procedure section 657, subdivision (1). "The trial court's determination on a motion for a new trial will not be disturbed on appeal absent a showing of a manifest and unmistakable abuse of discretion. [Citation.]" (*Wood v. Jamison* (2008) 167 Cal.App.4th 156, 162.)

Regarding any irregularity in the proceedings, the trial court stated: "The court does not find Mr. Edmondson's previous criminal conviction or assistance to Mr. Haddix denied [appellants] of a fair trial or that his involvement resulted in an irregularity of the proceedings."

Appellants have not established that the trial court abused its discretion in denying the motion for new trial.

DISPOSITION

The judgment is affirmed. McNamara shall recover his costs on appeal.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

MOHR, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.